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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/421,713	10/20/1999	LARRY A. WINTER	8567.72US01	4525

7590 05/05/2004

BRINK HOFER GILSON & LIONE  
P.O. BOX 10395  
CHICAGO, IL 60610

EXAMINER
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ABDI, KAMBIZ

ART UNIT	PAPER NUMBER
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3621

DATE MAILED: 05/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/421,713

Applicant(s)

WINTER ET AL.

Examiner

Kambiz Abdi

Art Unit

3621

MW

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5 and 8-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 8-41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. The prior office action is incorporated herein by reference. In particular, the observations with respect to claim language, and response to presented arguments.

- Claims 1-3, 8-15, 18-20, 22-27 and 35-41 are amended.
- Claims 6-7 are cancelled.
- Claims 1-5, and 8-41 are pending.

2. Examiner is withdrawing the rejection under 35 USC 112 second paragraph in the previous rejection forwarded to the applicant on 21 August 2003, based on the amendments applicants has made to the claims.

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 22 March 2004 has been entered.

### ***Response to Amendment***

3. Applicant's arguments filed on 22 March 2004, with respect to claims 1, 27, 35, and 40-41 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. Claim 1-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,343,277 to John Gaus et al. over U.S. Patent No. 6,047,274 to Jack J. Johnson et al and "CellNet Data Systems" web site content of 28 April 1998.

6. As for claims 1-26, 40, and 41, Gaus teaches all of the claimed elements representing utilization of computer system based energy market place. Gaus teaches utilization of graphical interface, Internet as a method of communication. The roles and responsibilities of a moderator within an online energy auction market for energy market with well established steps of collecting bids from all sides, establishing a clearing price, creating and collecting information for settling the transaction, information such as usage from the end users, and collecting contract information, to finalize a transaction between providers of energy and customers (see Gaus figures 1- 3, 5, 7, 11-14, 16-18, 22, also see column 3, lines 13-64, column 4, lines 22-68, column 5, lines 1-68, and column 6, lines 1-68). What Gaus does not explicitly teach are, details on meter reading and billing process as well as the utilization of real time data collected on a predetermined interval. Although, Johnson clearly discloses the system and methods of collecting meter reading at the end user (see Johnson abstract, figures 1, 4, 6, 7, 10-16, column 4, lines 14-60, column 2, lines 22-57, column 7, lines 15-24, column 8, lines 61-63, column 16, lines 1-13) But Johnson is not clear on if the data collected is based on real time predetermined interval collection. However, "CellNet Data Systems" clearly discloses metering on a real time based on predetermined intervals for calculation of prices on electric delivery (See CellNet page 3, page 5, paragraph 3, page 6, paragraph 3-5, page 14 and 15, tables 1-3, and page 15, paragraph 2). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to have integrated all the components mentioned above together in one system. As one can see utilization of a common marketplace which will help the energy providers, energy traders, and end users to benefit from efficient transaction amongst these entities. To provide such an environment as detailed information as possible it would be obvious how it can benefit to bring all the components of conducting business as such in one environment seamless to the users to expedite the entire transaction and make pricing more accurate. Therefore it reduces the cost of conducting an energy marketplace and mediating such a marketplace.

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7. As for claims 27-39, Guas teaches all of the claimed elements disclosed in the claims mentioned here (see Gaus figures 1- 3, 5, 7- 9, 14-18, and 20-22) except Gaus does not explicitly refer to the metering and bill components. Also, Gaus does not explicitly teach the power generation and how the system disclosed will effect power generation. Although, Johnson does explicitly teach the elements of metering and billing (see Johnson figures 4, 6, 10, 15, 16, column 3, lines 2-16, column 4, lines 33-40, column 7, lines 15-29, column 8, lines 61-63, column 9, lines 55-59, column 10, lines 18-22, and column 16, lines 1-13) as well as disclosing the adjustment of power availability by providers based on end users' actual usage data available to them through the disclosed system (see Johnson column 7, lines 15-51). Johnson further teaches that by implementing direct metering and integrating settlement and billing components, it will expedite the speed of transactions and ease of conducting business once all the necessary information and data are aggregated through one system, making the process from the start (i.e. bidding) to the end (i.e. payment) taking place in one seamless operation. However, "CellNet Data Systems" clearly discloses metering on a real time based on predetermined intervals for calculation of prices on electric delivery (See CellNet page 3, page 5, paragraph 3, page 6, paragraph 3-5, page 14 and 15, tables 1-3, and page 15, paragraph 2). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to have integrated all the components together in one system for the motivation stated above.

8. Examiner has pointed out particular references contained in the prior arts of record in the body of this action for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant, in preparing the response, to consider fully the entire references as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior arts or disclosed by the examiner.

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**Conclusion**

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kambiz Abdi whose telephone number is (703) 305-3364. The examiner can normally be reached on 9:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James P. Trammell can be reached on (703) 305-9768.

10. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Receptionist whose telephone number is (703)308-1113.

Any response to this action should be mailed to:

**Commissioner of Patents and Trademarks  
Washington D.C. 20231**

or faxed to:

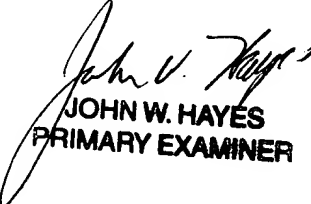
(703) 872-9306 [Official communications; including After Final communications labeled "Box AF"]

(703) 746-7749 [Informal/Draft communications, labeled "PROPOSED" or "DRAFT"]

Hand delivered responses should be brought to:

**Crystal Park 5, 2451 Crystal Drive  
7th floor receptionist, Arlington, VA, 22202**

**Abdi/K**  
April 30, 2004

  
**JOHN W. HAYES  
PRIMARY EXAMINER**